

PRESIDENTIAL TRANSITION “HOT ISSUES” INFORMATION PAPER

SUBJECT: *Securities and Exchange (SEC) Lease Procurement*

1. **BACKGROUND:** GSA ran a competitive procurement for the SEC Headquarters (SEC HQ) lease with a delineated area of the DC Central Employment Area. The successful offer affords SEC a purpose-built headquarters facility in a desirable location and includes a purchase option that the United States House of Representatives Committee on Transportation and Infrastructure requested GSA pursue to the “maximum extent practicable.”

- a. General Background:

- SEC's current leases (3 in total) at Station Place I, II & III contain 1,276,156 rentable square feet (RSF) with expiration dates of September 30, 2023.
- On July 9, 2018, GSA issued a competitive Request for Lease Proposals (RLP) 5DC0392 seeking 1.2 million SF of office and related space for a 15-year firm term, with priced, evaluated renewal and assignable purchase options. The renewal option term is 10 years. The two priced purchase options are available for the Government to exercise at the end of the firm and renewal terms. All of the options were evaluated as part of the overall price evaluation in accordance with the RLP.
- GSA successfully defended two sets of protests that were filed at both the Government Accountability Office (GAO) and the Court of Federal Claims (COFC). The first set of protests dealt with the reasonableness of evaluating the two purchase options as part of the competition. GSA prevailed in both the GAO and COFC cases. The second set of protests examined GSA's decision to remove one of the offerors from further participation in the competition based on a lack of amenities. Again, GSA prevailed both at GAO and COFC.

- b. Issues:

- GSA received final offers on June 21, 2019. In order to award the lease, GSA needs a Reimbursable Work Authorization (RWA) from the SEC to fund real property improvement construction costs. Additionally, GSA needs a signed Occupancy Agreement (OA). Both documents are overdue.
- SEC's existing leases are between the SEC and the incumbent Lessor. Any future extension or holdover issues would be for the SEC to negotiate and resolve with the incumbent Lessor. Without a further delegation from GSA, the SEC would need to be cautious of how it funds any extension or new lease term to avoid violating the recording statute. See, Securities and Exchange Commission - Recording of Obligation for Multiple-Year Contract, B-322160, October 3, 2011 (holding that SEC does not have the same authority that GSA has to obligate leases payments on a year-by-year basis).

2. **SCOPE AND EFFECT:**

- a. Impact on GSA's Customers:

- GSA's competitive procurement resulted in an Apparent Successful Offeror (ASO) that successfully meets all of SEC's mission and space related needs and provides the lowest priced technically acceptable solution.

b. Impact on the Private Sector and State & Local Governments:

Final offers were received over a year ago and the Court of Federal Claims denied the last outstanding protest in March of 2020. An extended delay or cancellation of the procurement presents a high risk of a legal challenge by the ASO. Media outlets are actively tracking the pending award of this lease.

3. **ACTION(S) PLANNED OR REQUIRED:**

GSA intends to execute the new lease as soon as we receive the signed OA and RWA from SEC.

4. **KEY STAKEHOLDER INTEREST:**

- Delegate Eleanor Holmes Norton inquired on October 20, 2020, about the status of the SEC procurement. We shared a timeline of activities ranging from submission of the Lease Prospectus PDC-11-WA17 to House & Senate Committees in December 2016 through final resolution of protests in March 2020.
- August 24, 2020 - OMB Director Vought met with GSA Administrator Emily Murphy regarding SEC's delay in providing the signed OA and RWA.

5. **FISCAL YEAR 2021/2022 BUDGET IMPACT:**

GSA expects the rent to start on the new lease in Fiscal Year 2025 and will impact GSA's Budget Activity 53 (the Rental of Space account) at that time.